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873-462—69——1

In the Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 914, 915, 916, 917, 918, 919, 920, 921 and 1038

THE NEW HAVEN INCLUSION CASES

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT BEFORE JUDGMENT

MEMORANDUM FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

This memorandum is submitted in response to (1) the jurisdictional statements that have been filed by various parties appealing from the decisions of a three-judge district court in the Southern District of New York sustaining the Interstate Commerce Commission's ultimate determination of terms for the inclusion of the properties of the New York, New Haven and Hartford Railroad Company in the merged Penn Central Company;[1] and (2) the peti-

[1] *The New York, New Haven & Hartford Railroad Company First Mortgage 4% Bondholders Committee* v. *United States, Interstate Commerce Commission, et al.* (No. 915); *Manufacturers Hanover Trust Co., as Trustee of the First and Refunding Mortgage of The New York, New Haven & Hartford Railroad Co.* v. *United States, Interstate Commerce Com-*

tions for writs of certiorari before judgment in the United States Court of Appeals for the Second Circuit seeking review of the decision of the United States District Court for the District of Connecticut sustaining in part and setting aside in part the same determination by the Commission.[2]

The United States and the Interstate Commerce Commission believe that the Court has jurisdiction of the appeals in Nos. 915, 917, 919 and 921, and that the Court should give further review to the questions they present. We also urge the Court to grant the petitions for writs of certiorari before judgment in Nos. 914, 916, 918, 920 and 1038, together with a related petition that we are filing contemporaneously herewith, *United States and Interstate Commerce Commission* v. *The New York, New Haven and Hartford*

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mission, et al. (No. 917); *Providence and Worcester Co.* v. *United States, Interstate Commerce Commission, et al.* (No. 919); and *Chase Manhattan Bank, N.A., as Trustee under the General Income Mortgage of the New York, New Haven & Hartford Railroad Co.* v. *United States, Interstate Commerce Commission, et al.* (No. 921).

[2] *The New York, New Haven & Hartford Railroad Co., First Mortgage 4% Bondholders Committee* v. *Richard J. Smith, as Trustee of the Property of New York, New Haven & Hartford Railroad Co., et al.* (No. 914); *Manufacturers Hanover Trust Co., as Trustee of the First and Refunding Mortgage of the Debtor* v. *United States, Interstate Commerce Commission and Penn Central Company, et al.* (No. 916); *Providence & Worcester Company* v. *Richard Joyce Smith, Trustee of the Property of New York, New Haven & Hartford Railroad Co.* (No. 918); *Chase Manhattan Bank, N.A., as Trustee under the General Income Mortgage of The New York, New Haven & Hartford Railroad Co.* v. *Penn Central Company, et al.* (No. 920); and *Penn Central Company* v. *Manufacturers Hanover Trust Company, as Trustee, et al.* (No. 1038).

Railroad Company First Mortgage 4% Bondholders Committee, et al., No. 1057. We urge the Court to consolidate all of these cases and to establish a schedule for briefing and argument—which we suggest *infra*—that will permit their decision this Term.

STATEMENT

The New Haven has been in reorganization under Section 77 of the Bankruptcy Act since 1961, in continuous proceedings before Circuit Judge Anderson, sitting in the District of Connecticut. In 1962, after the Penn-Central merger application was filed, the New Haven's trustees petitioned for its inclusion in the merged system. When this Court sustained the Penn Central merger, it upheld the Commission's action in conditioning approval of the merger on inclusion of the New Haven in the merged company, *Penn-Central Merger Cases*, 389 U.S. 486, 507–511. By consummating their merger on February 1, 1968, the merging parties irrevocably accepted this condition.

In 1967, prior to consummation of the Penn Central merger, the Commission established terms for the inclusion of the New Haven, which with certain exceptions were the terms upon which Penn Central and the New Haven trustees had agreed. The Commission departed from the negotiated agreement to provide for the contingency that inclusion might not occur at the time of the merger; in that event, Penn Central would be required (1) to lend the New Haven up to $25 million over a period of three years, and (2) to pay a share of the New Haven operating losses

of up to $5.5 million in any one year.[3] This Court did not pass upon these inclusion terms in its opinion approving the merger, noting rather than certain bondholders' objections to the terms "may be registered and adjudicated in the bankruptcy court or upon judicial review as provided by law." 389 U.S. at 511.

This specification of terms by the Commission in its "Inclusion Report" amounted both to the imposition of a condition to the Penn-Central merger under the Interstate Commerce Act (49 U.S.C. 5(2)(b)) and to the formulation of the first step of a reorganization plan for the New Haven pursuant to Section 77 (b)(5) and (d) of the Bankruptcy Act (11 U.S.C. 205(b)(5), 205(d)). Under its latter aspect, the Inclusion Report was certified to the United States District Court for the District of Connecticut (hereafter, the "reorganization court") in the New Haven reorganization proceeding that had been pending there since 1961; the reorganization court was thereupon required to determine, under Section 77(e), whether the plan was "fair and equitable." In addition, a number of parties instituted proceedings for review of the Inclusion Report—in its aspect as a condition of

[3] The Commission's decisions on the terms for inclusion—of which this was the first—have been set forth in a series of supplemental reports in the basic merger case, *Pennsylvania Railroad Company—Merger—New York Central Railroad Company*, I.C.C. Finance Docket No. 21989, etc. This first decision on inclusion (referred to throughout this litigation as the "Inclusion Report") was the Second Supplemental Report in that Docket; it is reported at 331 I.C.C. 643 and is set forth at pages 1a-111a of the common Appendix of Decisions and Constitutional and Statutory Provisions filed in these cases (which is hereafter cited as "App.").

the merger—by the three-judge court in the Southern District of New York that had handled judicial review of earlier phases of the Penn-Central merger under 28 U.S.C. 1336(a) and 2321–2325; that court was thus called upon to review the Commission's determination, under Sections 5(2)(b) and (d) of the Interstate Commerce Act, that the terms of inclusion were "just and reasonable" and "equitable." After their separate review proceedings, both courts concurred in remanding the matter of inclusion terms to the Commission for reconsideration and possible rehearing.[4]

The reorganization court also ruled in its decision that the New Haven should not bear any further cash operating losses beyond January 1, 1969. It noted that by about 1963 inclusion "was thought to be the solution which best served the interests of the creditors as well as the public interest" and that a motion to liquidate had been denied in 1968 in view of the prospects for inclusion.[5] The court urged the Commission to require at least a partial payment of the consideration from Penn Central to the New Haven trustees

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[4] *The New York, N.H. & H. R. Co., First Mortgage 4% Bondholders' Committee* v. *United States*, 289 F. Supp. 418 (S.D.N.Y.), App. 323a–383a; *In re New York, N.H. & H. R. R. Co.*, 289 F. Supp. 451 (D. Conn.), App. 237a–260a.

The United States had moved to dismiss the three-judge court actions on the ground that the reorganization court had exclusive jurisdiction. The motion was denied, the court noting that "unfortunate as the duplicitous system of review may be, we see no basis on which we can properly decline to exercise the jurisdiction conferred upon us by 28 U.S.C. §§ 1336(a) and 2321–25." 289 F. Supp. at 424–425; App. 325a–326a.

[5] 289 F. Supp. at 456–457; App. 242a.

and early inclusion of the New Haven into the Penn Central System.[6]

The remanded proceeding was expedited.[7] The Commission's "Remand Report" (1) prescribed new terms for New Haven's inclusion, including a higher price for its properties (increased from $125 million to $146 million), (2) required Penn Central to include the New Haven operations on or before January 1, 1969, subject to such revision of the price as might result from judicial review of its determination; and (3) imposed on Penn Central $5 million of New Haven's 1968 operating losses.

Penn Central sought to enjoin inclusion prior to final review and determination of the price but its effort was rejected by both the reorganization court and the three-judge court (App. 263a; 387a). On December 31, 1968, the New Haven's operations were included in the Penn Central system.

The New Haven's bondholders (who would be the beneficiaries of the payment for the properties made by Penn Central to the New Haven estate), the Providence and Worcester Railroad Company (which was dissatisfied with the terms of its incorporation into the merged system), and Penn Central then initiated a new round of litigation in both the reorganization

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[6] 289 F. Supp. at 458–459, 465–466; App. 244a–245a, 257a–258a.

[7] The reorganization court referred the proceeding back to the Commission on August 12, 1968 (App. 261a). The Commission entered an order on August 26, 1968, reopening the proceeding for reconsideration; hearings were held from October 7, 1968 through October 15, 1968; and the Commission entered its "Remand Report" (the Fourth Supplemental Report in the merger proceeding, reported at 334 I.C.C. 25 and set forth at App. 112a–220a) on November 25, 1968.

court and the three-judge court, contesting aspects of the Remand Report that were unfavorable to them. On May 28, 1969, the reorganization court (Circuit Judge Anderson) issued an opinion sustaining the Remand Report in large part but setting it aside with respect to four key items affecting the price to be paid by Penn Central, with the effect of increasing that price substantially. This opinion, review of which is sought by the various pending petitions for writs of certiorari before judgment, is reported at 304 F. Supp. 793, and set forth at App. 277a–306a. Following the issuance of this opinion, the three-judge court on June 18, 1969, in an opinion by Circuit Judge Friendly (in which District Judge Levet concurred and from which District Judge Weinfeld dissented), sustained the Commission's price determination except in minor respects that are not pertinent here. This decision, which is the subject of the pending direct appeals, is not yet reported but is set forth at App. 400a–443a.

Both the three-judge court and the reorganization court accepted the same basic criterion for pricing the New Haven properties—their liquidation value as of an appropriate date. On this basis, Judge Friendly's majority opinion carefully considered the conclusions that Judge Anderson had reached in his opinion in the reorganization court, as well as the similar views that Judge Weinfeld expressed in his dissenting opinion. The opinion concluded by stating:

> Essentially, we think our disagreements with Judge Anderson and Judge Weinfeld reflect a

> difference in view concerning how far we are at liberty to substitute our own notions for the decisions the Commission has taken * * *. [R]econciliation of divergent views will come ultimately in the nation's highest court, which alone can speak with authority. [App. 431a.]

The effect of the conflict between the approaches of the two courts is a difference of approximately $29 million in the price that Penn Central would have to pay for the New Haven properties. The specific points on which the two courts agreed and differed are elaborated *infra*.

Thereafter, the Commission issued a Fifth Supplemental Report, dated July 10, 1969, and modified on August 26, 1969 (334 I.C.C. 528, App. 222a–226a), in which it conformed its Remand Report to the decision of the three-judge court. The reorganization court entered its order, based upon its May 28 opinion and a further determination as to the discount of liquidation proceeds to present worth, on July 28, 1969. The three-judge court entered its decree on September 11, 1969.

Appeals from the order of the reorganization court to the United States Court of Appeals for the Second Circuit were then taken by the Commission, the United States, Penn Central, the three bondholder groups that are now appellants and petitioners here, and Providence & Worcester. Some of the appeals related to the inclusion terms, or "Step 1" of the reorganization court's decision; others related to "Step 2" of that decision, which concerns the distribution of the proceeds of the New Haven sale among the New Haven's creditors. The court of ap-

peals consolidated the appeals before it into two groups—one consisting of all of the Step 1 matters and the other of all of the Step 2 matters—but has not proceeded further toward briefing or argument of the appeals. All of the Step 1 appellants have now filed petitions for writs of certiorari before judgment, which raise in this Court all unresolved Step 1 issues. The Step 2 issues, which are separate and have not been before the three-judge court, remain pending in the Second Circuit and no party seeks to raise them in this Court before judgment there. No party has objected to the granting of any of the petitions for writ of certiorari before judgment; the New Haven's trustee, who has not petitioned, has filed a brief urging that the bondholders' petitions be granted, and Providence & Worcester, though a petitioner, takes no position on whether certiorari before judgment should be granted.

The three bondholder groups and Providence & Worcester also appealed directly to this Court, under 28 U.S.C. 1253, from the decision of the three-judge court,[8] and have now filed their jurisdictional statements. All parties are in agreement that this Court has jurisdiction of these direct appeals and no party has objected to plenary consideration of them. The New

[8] Providence & Worcester's appeal is actually from a separate opinion and judgment of the three-judge court (App. 394a–399a; 300 F. Supp. 185) entered on April 28, 1969. This Court extended the time for docketing that appeal to the docketing date for the other direct appeals. Providence and Worcester Company, as successor to Providence and Worcester Railroad Company, has moved to be substituted as a party in this Court, and no party has objected to such substitution.

Haven trustee, although not an appellant, has filed a response in which he urges plenary consideration of the bondholders' appeals.

The positions of the various parties in this Court may be summarized as follows: The Commission, the United States and Penn Central support the decision of the three-judge court and attack the decision of the reorganization court only to the extent that it differs from the decision of the three-judge court. The three bondholder groups—The New York, New Haven and Hartford Railroad Company First Mortgage 4% Bondholders Committee; Manufacturers Hanover Trust Company, as Trustee of the First and Refunding Mortgage of The New York, New Haven and Hartford Railroad Company; and Chase Manhattan Bank, N.A., as Indenture Trustee under the General Income Mortgage of the New York, New Haven and Hartford Railroad Company—support the decision of the reorganization court on the points on which it differs from the three-judge court; they also attack both decisions on a number of common points, which we shall describe in somewhat greater detail *infra*. The New Haven trustee has not yet expressed any position on the merits in this Court. Providence & Worcester raises, as noted, points relating to its status in the merged railroad system. All of these parties agree that all of the pending appeals and petitions should be considered on the merits together, and that such consideration should be completed this Term so that the problems of the New Haven inclusion can be finally resolved.

THE ISSUES PRESENTED

A. ISSUES ON WHICH THE LOWER COURTS DIFFER

The three-judge court, in sustaining the Commission, differed from the reorganization court in four particular respects. Three of these points relate to the propriety of certain discounts in the Commission's valuation of the New Haven facilities as of December 31, 1966 (the most recent date available when the Commission hearings were held in 1967) and one to the reorganization court's rejection of the value the Commission assigned to particular items.

1. *Deduction for costs of a one-year delay before abandonment of facilities could be authorized.* The appraisals of all witnesses at the 1967 hearings had assumed that on the valuation date the New Haven could immediately shut down and begin to liquidate the railroad. In its Inclusion Report, the Commission adjusted these appraised figures to December 31, 1966, thus assuming a liquidation that would begin on January 1, 1967. It found the New Haven properties should be valued at about $125 million, and made no further adjustments to that valuation because Penn Central had agreed to pay the equivalent of $125 million for the properties. When, however, the 1968 remands required departure from the agreed price, the Commission in its Remand Report further refined the appraisals by deducting $15,386,000, which it calculated to be the cost to the New Haven of a one-year delay before an abandonment certificate could be obtained under Section 1(18) of the Interstate Commerce Act and liquidation started.

These costs included real estate taxes, the expense of preserving the properties and a reduction in the present worth of the proceeds of a future sale of the properties. The majority of the three-judge court sustained the Commission (App. 411a–416a). The reorganization court on the other hand would preclude the Commission from considering this cost as an element of New Haven's liquidation value (App. 279a–292a).

2. *Bulk-sale discount.* The Commission also deducted $6,695,000 from the appraised value of New Haven's real estate to reflect the risks, not taken into account in the appraisals, that the New Haven would incur in selling its numerous properties piecemeal rather than in bulk to a single purchaser. The reorganization court rejected this bulk-sale discount on the ground that all the expenses and risks of piecemeal sales of New Haven's real estate had already been deducted in the Commission's initial valuation; it took the view that the additional discount would, in effect, give Penn Central a double deduction (App. 292a–294a). The three-judge court sustained the discount "as a proper measure of risks not taken into account by the appraisals and the discount to present value" (App. 417a).

3. *Valuation of the Harlem River and Oak Point Yards.* The reorganization court substituted for the Commission's valuation its own determination as to the proper value of New Haven's Harlem River and Oak Point Yards in the Bronx (App. 295a–297a). It had previously held on review of the Inclusion Report that the Commission's same valuation of these

yards was supported by substantial evidence.[9] The three-judge court sustained the Commission's valuation of $18.1 million (App. 423a), some $4.4 million less than the value found by the reorganization court.

4. *Computation of discount of liquidation proceeds to present worth.* Both courts held in their opinions that the Commission's finding of the appropriate discount of liquidation proceeds to present worth should be updated to take into account the minor changes in valuations made by the Commission and the courts. The Commission complied prior to the entry of a decree by either court (App. 223a–224a). Thereafter, the reorganization court accepted, on the settlement of its order, an argument by certain bondholders that the court should recompute the final discount to present worth thus found by the Commission; the reorganization court incorporated in its decree a new finding regarding this discount (App. 318a). When these bondholders made the same argument to the three-judge court, that court held that this new contention was not "appropriately before us on settlement of the decree" (App 445a).

The effect of these disagreements between the two courts may be summarized as follows:

Item	Commission valuation as sustained by 3-judge court	Reorganization court's substituted value	Difference
Cost of 1-year abandonment delay	$15,386,000	0	$15,386,000
Discount of land valued and sold in bulk	6,695,000	0	6,695,000
Value of Harlem River and Oak Point yards	18,100,000	$22,539,000	4,439,000
Discount of liquidation receipts to present worth	[1] 17,153,000	[2] 15,147,101	2,005,899
Total			$28,525,899

[1] $17,563,000 (331 I.C.C. at 661; p. 19a) less $410,000 (334 I.C.C. at 530; p. 224a).
[2] $17,563,000 less $2,415,899 (p. 318a).

[9] See 289 F. Supp. at 464; App. 253a–254a.

As we point out in our petition for a writ of certiorari before judgment, the United States and the Interstate Commerce Commission believe (as does Penn Central) that the three-judge court properly deferred to the Commission's determinations of these four items, and that the reorganization court improperly substituted its own valuations for the Commission's.

B. ISSUES ON WHICH THE LOWER COURTS AGREE

We believe the following to be a fair summary of the numerous questions raised in the jurisdictional statements and petitions of the bondholders and of the Providence & Worcester relating to matters on which the two courts below agreed.

1. The bondholders argue that the New Haven should be compensated for whatever income from Grand Central Terminal area hotels and office buildings[10] pays New Haven's share of the terminal expenses. The Commission valued New Haven's interest in these properties at $28.9 million, capitalizing its share of income *after* payment of expenses. Both of the lower courts sustained this approach, holding that New Haven's contractual interest in these properties was limited to a 50 percent share of income after payment of terminal expenses, and that its right to "free use"

[10] New Haven and Penn Central have shared rights to income from certain New York City hotels and other properties and air rights in an area between 42nd Street on the south, 60th Street on the north, Madison Avenue on the west, and Lexington Avenue on the east. The issues before the Commission and the lower courts included the nature of New Haven's interest in these properties and the value of that interest, if any.

of the terminal was not assignable or, as a practical matter, marketable.

2. The bondholders claim that the New Haven loss operation has $55 million of "going concern value," based on historical organizational and engineering costs, because the New Haven will continue in operation. The Commission held that the award of such values would be inconsistent with a liquidation-value approach. The three-judge court agreed; the reorganization court also agreed, and added that the concept of "going concern" values here ignored New Haven's history of deficit operations.

3. The bondholders argue that the New Haven is entitled to the present cash equivalent of the 950,116 shares of Penn Central stock which comprise the largest single element of the consideration to be paid to the New Haven for its properties. The Commission valued this stock at $87.50 per share by capitalizing a portion of the projected Penn Central earnings. On the first appeals concerning the inclusion terms, the market price of the stock was around $85 per share; in 1969, it declined to a much lower level. Both courts have sustained the Commission's valuation subject to a requirement that Penn Central underwrite the value of the stock until 1978, when the merger savings should be fully realized. The guarantee assures the bondholders of realization of the $87.50 valuation.

4. The bondholders argue that Penn Central should be required to absorb all of New Haven's operating losses from the date of merger (February 1, 1968) to the date of actual inclusion (December 31, 1968). The Commission required Penn Central to lend up to $25

million to New Haven following the date of the merger,[11] imposed $5 million of New Haven's operating losses in 1968 on Penn Central, and required actual inclusion to occur only eleven months after the date of the merger. Both lower courts sustained this allocation of the burden of the interim losses.

5. Certain bondholders urge that shares of common stock in two enterprises and certain certificates of the Boston & Providence Railroad should not have been conveyed to Penn Central with a zero value. The complained of shares were in the New York Connecting Railroad and the Railway Express Agency, both of which are related to the operations of various railroads and are jointly owned by them. The certificates of contingent beneficial interest in the Boston & Providence are promises of Penn Central to pay the holders a share of total proceeds when extraordinary gains result from Penn Central's sale of B&P property; such certificates would have value only if held by a party *other than* Penn Central.

6. It is also urged that the evidence does not support the Commission's estimate—sustained by both courts—that the New Haven properties depreciated about $3 million in 1966.

7. Providence & Worcester's appeal and petition question the fairness of the treatment accorded it by the Commission, which both courts upheld. The trustees of the New Haven were permitted to reject the lease of facilities that the New Haven had had from P&W for many years, but a place was made for that company in Penn Central subject to the terms of the

[11] During 1968, the New Haven in fact borrowed $14 million from Penn Central under the terms and conditions prescribed by the Commission.

lease. The Commission required P&W only to change a nineteenth century restriction on the voting of its stock to a one share-one vote requirement. If P&W made no such change, Penn Central would have the option to operate P&W for P&W's account unless and until such time as an abandonment application of either railroad should be filed, heard, and granted.

DISCUSSION

As we state in our petition for a writ of certiorari before judgment to review the reorganization court's decision, the United States and the Interstate Commerce Commission believe that the conflict between the two courts concerned with the Commission's pricing of the New Haven properties should now be resolved in this Court. The three-judge court has carefully considered the decision of the reorganization court, but there remains a division among the fourt judges who have, over the years, become most familiar with the problems of the New Haven. And, although the differences relate specifically to matters of valuation, they arise from a single underlying disagreement as to the relative roles of the Commission and the courts in matters of this nature. This underlying issue is worthy of the Court's attention and ripe for its consideration.

Were it not for this conflict between the two courts, we would urge the Court not to give plenary consideration to the matters raised in the petitions and jurisdictional statements of the bondholders and Providence & Worcester as to which both lower courts agree. We believe that those matters have been amply explored in the courts below and that their conclusions are correct. However, those matters are closely inter-

twined, for the most part, with the issues that the court should review, and it would be impracticable to attempt to weed them out at this stage of the proceedings. Moreover, they are all raised in the appeals pending in the Second Circuit and there is a substantial likelihood that some or all of them would be brought back to this Court after a decision there. Thus, we believe that judicial economy would be served by this Court's consideration now of all the issues that have been raised with respect to the terms of the New Haven inclusion.

If this Court hears and decides these cases this Term, the long pending litigation over the terms of the New Haven inclusion and its impact upon the Penn Central can finally be terminated, leaving only the "Step 2" issues relating to the division of the proceeds among the New Haven creditors. The result would be at long last to free the former New Haven operations, and the Penn Central system generally, from the financial uncertainties that have hung over them because of this litigation, as well as to stop the drain from the litigation itself. In this we believe there is a significant public interest. We have attempted to indicate that the issues presented are not as numerous or as complicated as they might seem, and therefore that they are suitable for disposition by this Court without unusually extensive argument.

Looking toward disposition of these cases this Term, we suggest that the following briefing schedule would be appropriate if the petitions are granted and probable jurisdiction of the appeals is noted at the Court's January session: (1) The bondholders, the

New Haven trustee and Providence & Worcester would file their main briefs on the merits within thirty days after the date of the Court's order; (2) Penn Central, the United States, the Interstate Commerce Commission, and the States of Connecticut and New York would file their briefs within thirty days thereafter; and (3) any reply briefs would be filed by the parties first listed within twenty days thereafter.

We are authorized to state that all of the parties listed above—whom we believe to be all of the parties who will participate actively in these cases[12]—acquiesce in the granting of the petitions and the noting of probable jurisdiction in all of the cases with respect to which this Memorandum is submitted, as well as the government's petition in No. —, and that none of them will file any further brief prior to the Court's consideration of the petitions and jurisdictional statements. Each of them further agrees to the proposed briefing schedule if the cases are heard on the merits.

CONCLUSION

Probable jurisdiction should be noted in Nos. 915, 917, 919 and 921; the petitions for writs of certiorari before judgment should be granted in Nos. 914, 916, 918, 920 and 1038, as well as in No. 1057 (in which the government petitions); the cases should be consoli-

[12] The time for responding to the petitions and jurisdictional statements in Nos. 814–920 expired on January 7, 1970, and no other party had by then either filed a response or sought additional time for doing so. We are contacting counsel of record for the other parties in the lower courts and expect that, by the time when this Memorandum is filed, we will be able to advise the Clerk that none of them will file any response to the government's petition or that of Penn Central (Nos. 1038 and 1057).

dated; and the Court should direct briefing in accordance with the schedule suggested above.

Respectfully submitted.

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JANUARY 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970